IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No.2867 of 1994
Date of Decision: 13.12.2006

Ram Singh and another.

..... Appellants

Versus

Sardara Singh and others.

..... Respondents

CORAM: Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri Ramesh Sharma, Advocate for Shri A.S.Kalra, Advocate for the appellants.
Shri K.S. Dadwal, Advocate for the respondents.

....

Mahesh Grover,J.

The defendants are in Regular Second Appeal against judgments and decrees dated 13.12.1990 and 23.8.1994 passed by the Sub Judge Ist Class, Garhshankar (for brevity, `the trial Court') and the Additional District Judge, Hoshiarpur (hereinafter referred to as `the lower Appellate Court'), respectively.

Briefly stated the facts of the case are that the plaintiffs-respondents filed a suit for possession of land measuring 1222 square feet

which formed part of land measuring 2 kanals and 10 marlas bearing khasra nos. 174/1/1, 174/1/2, 174/2, 174/3 (hereinafter known as `the suit land'). It was averred by the respondents in the plaint that they were owners of the suit land and that the land of the appellants is situated towards the eastern side thereof and comprised in khasra no.175. The respondents further pleaded that the appellants had encroached the suit land about 2-1/2 years ago without their consent. The appellants had filed a suit for injunction in respect of this land claiming it to be a part of khasra no.175 which belonged to them. The respondents had contested that suit and claimed that the land belonged to them. The said suit was decreed, but, in appeal preferred by the respondents, the judgment and decree were modified in the following terms:-

> "Keeping this situation in view the present appeal is partly accepted and decree is modified to the effect that the plaintiffs are owners of Khasra Nos. 175 measuring 2 kanals 4 marlas and are in possession of the site shown ABCD in plan including the alleged portion said to have been encroached upon by them from the land of the appellants. Consequently, the appellants shall stand restrained from dispossessing the plaintiff- respondents from the suit land otherwise than in due course of law including the relief which they may get in suit for possession of alleged encroached portion of their land."

The suit was contested by the appellants, who admitted their ownership on khasra no.175 and also admitted the factum and proceedings in the earlier suit. Rest of the averments made by the respondents were denied and the ownership of the suit land including land measuring 2 kanals

and 10 marlas as claimed by them was also denied. A plea of adverse possession was also sought to be raised by the appellants on the strength of the pleadings that their predecessors-in-interest were in possession of the suit land since the time of consolidation, i.e. 1952-53.

On the pleadings of the parties, the following issues were framed by the trial Court:-

1. Whether the suit site is a part of khasra Nos. 174/1/1, 174/1/2, 174/3?OPP
2. Whether the plaintiffs are entitled to possession?OPP
3. Whether the suit is barred by principles of res judicata?OPD
4. Whether the suit is within time?OPP
5. Whether the site plan of the plaintiffs is incorrect?OPD

5.A Whether the report of Local Commissioner is liable to be set aside?OPD

6. Relief.

After appraising the evidence adduced before it, the learned trial Court decided issue nos. 1, 2 and 4 in favour of the respondents, while under issue nos. 3, 5 and 5-A, the findings were returned against the appellants. The suit of the respondents was accordingly decreed for possession of 1222 square feet of land with costs.

Aggrieved against the findings of the trial Court, the appellants filed an appeal which was dismissed by the lower Appellate Court. The present appeal is against the afore-stated judgments of the learned trial Court and the learned lower Appellate Court.

Having heard learned counsel for the parties and perused the record, I am of the considered opinion that the appeal deserves to fail. A

perusal of the record reveals that the jamabandi for the year 1985-86 (Exhibit P5 on the file) depicts the respondents to be the owners of the land comprised in khasra nos. 174/1/1, 174/1/2, 174/2 and 174/3 measuring 2 kanals and 10 marlas. Concededly, the appellants are in possession of khasra no.175. Exhibits D1 and D4 are the judgments pertaining to the prior suit inter se between the parties in which no finding regarding encroachment was returned. The subject-matter of the present suit is only the land measuring 1222 square feet comprised in khasra nos. 174/1/1m 174/1/2, 174/2 and 174/3 on which the encroachment was made and which was not the subject-matter in the earlier suit. Hence, the plea of the present suit being barred by the principle of res judicata is not tenable. Both the Courts had taken into account the report of the Local Commissioner, Exhibit P3, which established the factum of the encroachment made by the appellants. Despite the fact that the Courts below have recorded their satisfaction on the veracity of the findings contained in the report of the Local Commissioner, nothing has been shown to persuade this Court to hold to the contrary.

The question of encroachment having been made is a question of fact which has been determined conclusively by the Courts below by returning a concurrent finding to that effect which cannot be interfered with in Regular Second Appeal as has been observed by the Hon'ble Supreme Court in G.Mahalingappa Versus G.M.Savitha, (2005) 6 S.C.C. 441, and Madhavan Nair Versus Bhaskar Pillai (dead) by Lrs., (2005) 10 S.C.C. 553.

In so far as the plea of adverse possession is concerned, the appellants have failed either to establish it by way of pleadings or by way of any cogent evidence on record. Hence, the plea is without any merit and is liable to be rejected.

That apart, no substantial question of law has neither been framed nor has been shown to have arisen in the present appeal.

Consequently, the Regular Second Appeal is devoid of any merit and is dismissed as such.

December 13,2006 (Mahesh Grover)
"SCM" Judge